

FILED

LAW OFFICES OF RICHARD A. PROAPS
Richard Proaps, Esq. (Cal. SBN 78898)
rproaps@aol.com
8150 Greenback Lane, Bldg. 200
Fair Oaks, California 95628
Tel: (916) 722-1665
Fax: (916) 722-4881

2011 AUG 10 PM 12:00

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

BY _____

Attorneys for Plaintiff
LEE CHERAMIE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEE CHERAMIE, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

HBB, LLC, a Tennessee limited
liability company, and DOES 1 through
10, inclusive,

Defendants.

CASE NO.: **CV11-6549 R (AJWx)**

CLASS ACTION

COMPLAINT FOR EQUITABLE
RELIEF AND DAMAGES

JURY TRIAL DEMANDED

Plaintiff, LEE CHERAMIE, by and through counsel, files this Complaint for Equitable Relief and Damages, individually and on behalf of all others similarly situated, and alleges against Defendant, HBB, LLC ("HBB," or "Defendant"), as follows:

I. VENUE AND JURISDICTION

1. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1332, *et seq.*, which explicitly provides for the original jurisdiction of the federal courts over any class action in which any member of the plaintiff class is a citizen of a state different from any Defendant, and in which the

1 matter in controversy exceeds in the aggregate the sum of \$5,000,000.00, exclusive
2 of interest and costs.

3 2. As set forth below, Plaintiff is a citizen of California, and Defendant
4 can be considered a citizen of Tennessee. Therefore, diversity of citizenship exists
5 under CAFA, as required by 28 U.S.C. § 1332(d)(2)(A).

6 3. The total claims of the individual members of the Plaintiff Class in this
7 action are in excess of \$5,000,000.00 in the aggregate, exclusive of interest and
8 costs, as required by 28 U.S.C. § 1332(d)(2), (5).

9 4. More than two-thirds of all of the members of the proposed Plaintiff
10 Class in the aggregate are citizens of a state other than California, where this action
11 is originally being filed, and that the total number of members of the proposed
12 Plaintiff Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B).

13 5. This Court has authority to exercise personal jurisdiction over
14 Defendant because HBB, directly and through its agents, has substantial contacts
15 with and receives benefits and income from and through the State of California.

16 6. Venue in this Judicial District is proper pursuant to 28 U.S.C. § 1391(a)
17 because, as set forth below, Defendant conducts business in this Judicial District,
18 and Plaintiff purchased the subject product of this action in this Judicial District.

19 7. The Declaration of Richard Proaps, Pursuant to Civil Code § 1780(c) of
20 the Consumers Legal Remedies Act, Civil Code § 1750, *et seq.* ("CLRA") regarding
21 venue under the California Consumer Legal Remedies Act is being concurrently
22 filed, or forthwith thereafter, with the Court.

23 II. PARTIES

24 8. Plaintiff LEE CHERAMIE is an individual who at all times relevant
25 herein was over the age of 18 and a citizen of California. He resides in Venice,
26 County of Los Angeles, and purchased the subject product of this Complaint in this
27 District.

1 9. Defendant HBB, LLC is a Tennessee limited liability company that
2 manufactures and distributes the product "Lazy Cakes." HBB lists with the
3 Tennessee Secretary of State its principal place of business as being located at 1837
4 Harbor Avenue, Memphis, TN 38113, and an agent for service of process by the
5 name of Terry Harris, whose address is listed as 1837 Harbor Avenue, PO Box
6 13311, Memphis, TN 38113.

7 10. HBB is the manufacturer, distributor, marketer, promoter, and seller
8 of the subject product of this Complaint, "Lazy Cakes," an edible brownie-like
9 relaxation aid, and conducts business in this jurisdiction and in this Judicial District
10 by advertising and sale of its products to wholesalers and retailers, and through its
11 agents that deliver and sell Lazy Cakes to consumers.

12 III. GENERAL ALLEGATIONS

13 11. All allegations herein, except as to Plaintiffs as set forth herein, are
14 based on information and belief and are likely to have evidentiary support after
15 reasonable opportunity for further investigation and discovery.

16 12. At all times relevant herein, HBB and its subsidiaries, affiliates, and
17 other related entities, as well as their respective employees, were the agents,
18 servants and employees of HBB, and at all times relevant herein, each was acting
19 within the purpose and scope of that agency and employment.

20 13. At all times relevant herein, the distributors and retailers who delivered
21 and sold Lazy Cakes, as well as their respective employees, also were HBB's
22 agents, servants and
23 employees, and at all times herein, each was acting within the purpose and scope of
24 that agency and employment.

25 14. The true names and capacities of Defendants named herein as Does 1
26 through 10, inclusive, are unknown to Plaintiff who therefore sue said Defendants,
27 and each of them, by such fictitious names. Plaintiff will amend this Complaint to
28 identify their true names and capacities when the same has been ascertained.

1 Defendant named herein and each of said fictitiously named Defendants are
 2 negligently or otherwise legally responsible in some manner for the occurrences
 3 herein alleged and that the injuries and damages as hereinafter alleged were
 4 proximately caused by said negligence or other acts.

5 15. Whenever reference in this Complaint is made to any act by HBB or
 6 its subsidiaries, affiliates, distributors, retailers and other related entities, such
 7 allegation shall be deemed to mean that the principals, officers, directors,
 8 employees, agents, and/or representatives of HBB committed, knew of, performed,
 9 authorized, ratified and/or directed that act or transaction on behalf of HBB while
 10 actively engaged in the scope of their duties.

11 12 13 IV. FACTUAL ALLEGATIONS

14 16. HBB manufactures, markets, advertises and sells a brownie-like
 15 relaxation aid throughout the United States known as Lazy Cakes. Also referred to
 16 as "the relaxation brownie." Lazy Cakes are baked with melatonin (N-acetyl-5-
 17 methoxytryptamine), a hormone that controls the sleep cycle.¹

18 17. Melatonin is not regulated by the Food and Drug Administration
 19 (FDA) or any other regulatory agency nor has it been evaluated for effectiveness,
 20 safety or purity.² All potential risks of melatonin may not be known and research as
 21 to its efficacy, safety, side effects and proper dosage is inconsistent and
 22 inconclusive.³

23 18. The Product, packaged as an individual brownie, contains a total of 8
 24 milligrams of melatonin. The serving size of Lazy Cakes is one half of the Product.

25 19. Lazy Cakes retails around \$3.00 per brownie while melatonin
 26 supplements in pill form containing the same dosage cost approximately \$0.10.

27 ¹ *Melatonin*, SLEEPDEX.ORG, available at <http://www.sleepdex.org/melatonin.htm>, (last visited
 28 May 28, 2011).

² *Id.*

³ *Id.*

20. The FDA does not regulate supplements, however it does regulate food products. The makers of Lazy Cakes are attempting to market the packaged brownie as a supplement and not a food product.⁴ Tim Barham, the vice president of HBB, stated, "We look at the brownie as a supplement."⁵

21. On January 13, 2010, the FDA issued a warning letter to Innovative Beverage Groups Holdings, Inc., the makers of a beverage product "Drank."⁶ Drank also contains melatonin. The letter stated the company was in violation of section 402(a)(2)(C) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 342(a)(2)(C)] for using melatonin as an additive in its beverage product. The company has since marketed the product as a supplement.

22. Lazy Cakes also contains a blend of valerian root, passion flower and rose hips. As with melatonin, these supplements are not regulated nor have they been proven effective or safe.

23. Lazy Cakes are sold in convenience stores, tobacco shops and are available online with shipping available within the Continental United States.

24. Melatonin is most commonly thought to ease insomnia and/or combat jet lag. Melatonin causes drowsiness and should not be taken while driving or operating heavy machinery. Dr. David S. Seres, the director of medical nutrition at Columbia Medical Center stated, "If you take [melatonin] while you're driving a car, you will find yourself in a ditch."⁷

25. According to the Mayo Clinic, ingesting melatonin can produce a wide range of possible side effects that range from mild to potentially life threatening.⁸ The mild side effects include dizziness, headaches, abdominal discomfort,

⁴ Catherine Saint Louis, *Dessert, Laid-Back and Legal*, N.Y. TIMES, May 14, 2011, available at <http://www.nytimes.com/2011/05/15/us/15lazycakes.html?r=2&scp=1&sq=melatonin&st=cse> (last visited May 28, 2011).

⁵ *Id.*

⁶ FDA Warning letter: Innovative Beverage Group Holdings, Inc. 1/13/10, available at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2010/ucm201435.htm>.

⁷ *Id.*

⁸ *Melatonin Side Effects: What are the Risks?*, MAYOCLINIC.COM, available at <http://www.mayoclinic.com/health/melatonin-side-effects/AN01717> (last visited May 28, 2011).

1 confusion, sleepwalking and increased nightmares. The more dangerous side
 2 effects include low blood pressure, seizures, depression or worsening depression,
 3 anxiety, and trouble breathing.⁹ Additionally, it is noted that taking melatonin for
 4 longer than two months may be harmful.¹⁰

5 26. The potential drowsiness effect of Lazy Cakes is listed only in small
 6 black print on the outer package of the Product.

7 27. The Product does not warn of the other potentially life threatening side
 8 effects on their packaging.

9 28. Doses of melatonin as low as 0.2 milligrams have been found to be
 10 effective as a sleep agent while one serving of Lazy Cakes has twenty times that
 11 amount.¹¹

12 29. On May 18, 2011, ABC News reported that “[c]hildren consuming too
 13 much melatonin is a documented problem. According to the American Association
 14 of Poison Control Centers, melatonin accounts for more calls to poison centers than
 15 any other herb or supplement, and most of the calls involve children.”¹²

16 30. A two year old boy in Arizona was hospitalized after eating a few bites
 17 of Lazy Cakes.¹³

18 31. Reports have recently circulated throughout the United States that raise
 19 concern over the sale and distribution of Lazy Cakes.

20 32. Upon information and belief, the Product is marketed toward
 21 children.¹⁴

22
23
24 ⁹ *Id.*

25 ¹⁰ *Id.*

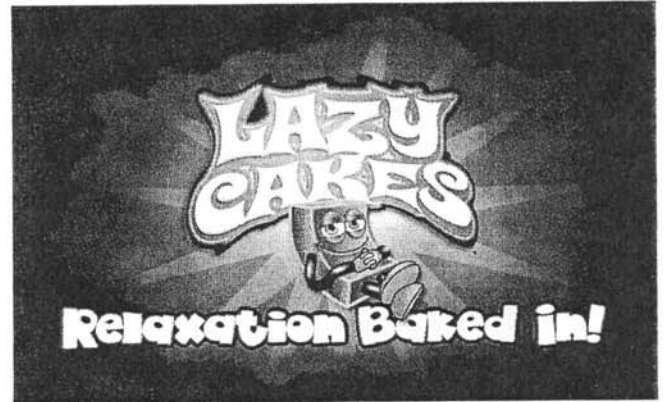
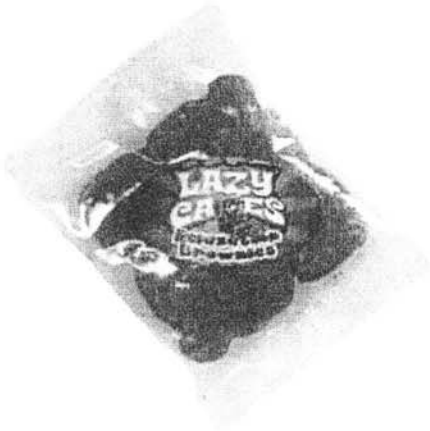
26 ¹¹ *Id.*

27 ¹² *Bad Brownie: Children Become Sick After Eating Brownie Made With Melatonin*,
 ABCNEWS.COM, available at <http://abcnews.go.com/Health/children-sick-eating-brownies-melatonin/story?id=13622693> (last visited May 28, 2011).

28 ¹³ *Id.*

¹⁴ See Sally MacDonald, *Lazy Cakes Draws Attention of Doctors*, MYFOXHOUSTON.COM, May 25, 2011, available at <http://www.myfoxhouston.com/dpp/news/local/110525-lazy-cakes-draw-attention-of-doctors> (last visited May 28, 2011).⁶

33. One parent noted that the “Lazy Larry” character on the Lazy Cakes packaging resembles the cartoon character Sponge Bob, which is commonly known to many children and young adults.¹⁵



34. As of May, 2011, the Arkansas Department of Health has banned Lazy Cakes from sale within the state¹⁶ and two towns in Massachusetts are considering a ban on Lazy Cakes due to its kid-friendly marketing.¹⁷

35. Defendant had a duty to disclose the potential deleterious effects attributable to its Products as a result of the lack of safety in consuming such products as Defendant intended.

36. Due to its colorful, cartoon packaging, Defendant markets its product to a particularly vulnerable audience, notably impressionable children and young adults.

37. As a result of the deceptive marketing of Lazy Cakes as set forth above, Defendant has been able to charge a price premium for Lazy Cakes over similar melatonin supplements.

¹⁵ *Id.*

¹⁶ Christine Young, *Arkansas Bans Popular Lazy Cakes 'Relaxation Brownies,'* Fairwarning.org, May 20, 2011, available at <http://www.fairwarning.org/2011/05/arkansas-bans-popular-lazy-cakes-relaxation-brownies/> (last visited May 28, 2011).

¹⁷ *State May Ban 'Lazy Cakes' Brownies with Melatonin After Sleep Inducing Dessert Sickens Kids*, NYDAILYNEWS.COM, May 18, 2011, available at http://articles.nydailynews.com/2011-05-18/entertainment/29576153_1_lazy-cakes-melatonin-dietary-supplements (last visited May 28, 2011).

1 38. Based on the advertising and labeling of these products and the
2 omissions of material facts from such labeling and advertising, Plaintiff Cheramie
3 purchased Lazy Cakes on May 18, 2011, from <http://www.mylazycakes.com>, for
4 \$11.00. The product caused the Plaintiff to suffer from extreme fatigue,
5 exhaustion, and slurred speech.

6 39. Nothing in the advertising, labeling, packaging, marketing, promotion
7 and selling of Lazy Cakes gave Plaintiff any warning of the particular dangers of
8 consuming melatonin nor of the potential limitation of this non-regulated
9 supplement.

10 40. In an effort to continue reaping large financial gains from the sale of
11 Lazy Cakes, HBB has omitted mention of these potentially harmful effects in its
12 packaging, labeling, marketing, advertising and other promotion of Lazy Cakes.
13 Because such information goes to the safety of the product, HBB was under a duty
14 to disclose such information, which it failed to do. Plaintiff purchased Lazy Cakes
15 based in substantial part on its advertising and labeling and the omissions of
16 material facts from such labeling and advertising. While expecting to purchase a
17 relaxation agent, he did not reasonably expect to be purchasing a potentially
18 dangerous product which the reasonable consumer targeted by the advertising and
19 promotion of such products could not have reasonably discovered. Given the
20 foregoing, Plaintiff was misled by Defendant into purchasing and paying for a
21 dangerous product that was not what it was represented to be and did not receive
22 the benefit of their bargain.

23 41. As a result, Plaintiff suffered injury in fact and a loss of money or
24 property in that he spent money purchasing Lazy Cakes at a price premium when it
25 actually had significantly less value to him than was reflected in the price paid for
26 it. Since Lazy Cakes has significantly less value to him, either by being harmed by
27 the Product or mislead as to its efficacy, Plaintiff has suffered damage and injury in
28 terms of the expenditure of the purchase price of Lazy Cakes. While Plaintiff seeks

1 redress for his economic injuries, he does not assert claims for personal injury,
2 either individually or on behalf of the Plaintiff Class.

3 42. The facts as stated herein were material in that had Plaintiff known the
4 true undisclosed facts about Lazy Cakes set forth above, he would not have
5 purchased the Product at all.

6 V. CLASS ACTION ALLEGATIONS

7 43. Plaintiff re-alleges and incorporates by reference the allegations set
8 forth in each of the preceding paragraphs of this Complaint.

9 44. Pursuant to Federal Rule of Civil Procedure ("FRCP") 23, Plaintiff
10 brings this class action and seeks certification of the claims and certain issues in
11 this action on behalf of himself and all persons who, during the Class Period
12 (defined as the period extending back four years prior to the filing of this action, or
13 to the date Lazy Cakes was first sold, whichever is most recent), purchased for
14 personal use Lazy Cakes manufactured, advertised and sold by Defendant.

15 45. Defendant's practices and omissions were applied uniformly to all
16 members of the Class, so that the questions of law and fact are common to all
17 members of the Class. All members of the Class were and are similarly affected by
18 not receiving disclosure of the risks associated with consuming Lazy Cakes, and the
19 relief sought herein is for the benefit of Plaintiff and members of the Class. HBB's
20 marketing, advertising and promotional practices as detailed above were targeted
21 and applied uniformly to all members of the Class throughout the relevant time
22 period, so that the questions of law and fact detailed herein are common to all
23 members of the Class. All Class members were and are similarly affected by
24 purchasing Lazy Cakes for its intended and foreseeable purpose as promoted,
25 advertised, packaged, and labeled by HBB and as set forth in detail above.

26 46. Excluded from the Class are employees and agents of Defendant, the
27 Judge and his or her relatives back to the second degree of affinity, officers and
28 directors of Defendant, and counsel for Plaintiff and the Class.

1 47. The proposed Class is so numerous that joinder of all members would
2 be impracticable. Based on the annual sales of Lazy Cakes and its popularity, it is
3 apparent that the number of consumers of Lazy Cakes would be so large as to make
4 joinder impossible.

5 48. Questions of law and fact common to the Class exist that predominate
6 over questions affecting only individual members, including, *inter alia*:

- 7 a. Whether Defendant's practices, representations and failure to warn of
8 the dangers of Lazy Cakes made in connection with the labeling,
9 packaging, advertising, marketing, promotion and sales of Lazy Cakes
10 were deceptive, unlawful or unfair in any respect, thereby violating
11 California's Unfair Competition Law ("UCL"), Bus. & Prof. Code §
12 17200, *et seq.*;
- 13 b. Whether Defendant's practices, representations and failure to warn of
14 the dangers of Lazy Cakes made in connection with the labeling,
15 packaging, advertising, marketing, promotion and sales of Lazy Cakes
16 were deceptive, unlawful or unfair in any respect, thereby violating
17 California's False Advertising Law ("FAL"), Bus. & Prof Code §
18 17500, *et seq.*;
- 19 c. Whether Defendant's practices made in connection with the labeling,
20 packaging, advertising, marketing, promotion and sales of Lazy Cakes
21 violated California's Consumers Legal Remedies Act, California Civil
22 Code § 1750, *et seq.*;
- 23 d. Whether Defendant misrepresented the characteristics or other aspects
24 of Lazy Cakes;
- 25 e. Whether Defendant failed to disclose, withheld or misrepresented
26 material information regarding adverse health effects from the use of
27 Lazy Cakes in an effort to deceive consumers;
- 28

- 1 f. Whether Defendant knowingly and intentionally concealed from
2 Plaintiff and members of the Class material information regarding
3 adverse health effects from the use of Lazy Cakes;
4 g. Whether Defendant's conduct as set forth above injured consumers
5 and, if so, the nature and extent of the injury; and
6 h. Whether Defendant has been unjustly enriched, such that disgorgement
7 of profits is proper, for the wrongful conduct set forth herein.

8 49. The claims asserted by Plaintiff in this action are typical of the claims
9 of the members of the Class, as the claims arise from the same course of conduct by
10 Defendant and the relief sought is common.

11 50. Plaintiff will fairly and adequately represent and protect the interests
12 of the members of the Class. Plaintiff has retained counsel competent and
13 experienced in both consumer protection and class action litigation.

14 51. Certification of this class action is appropriate under Fed. R. Civ. Proc.
15 23 and California Civil Code §1781 to the extent applicable, because the questions
16 of law or fact common to the respective members of the Class predominate over
17 questions of law or fact affecting only individual members. This predominance
18 makes class litigation superior to any other method available for the fair and
19 efficient adjudication of these claims. Absent a class action, it would be highly
20 unlikely that the representative Plaintiffs or any other members of the Class would
21 be able to protect their own interests because the cost of litigation through
22 individual lawsuits might exceed expected recovery.

23 52. Certification also is appropriate because Defendant acted or refused to
24 act on grounds generally applicable to the Class, thereby making appropriate the
25 relief sought on behalf of the Class as a whole. Further, given the large number of
26 consumers of Lazy Cakes, allowing individual actions to proceed in lieu of a class
27 action would run the risk of yielding inconsistent and conflicting adjudications.
28

53. A class action is a fair and appropriate method for the group-wide adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the Courts that individual actions would engender.

54. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

VI. FIRST CAUSE OF ACTION VIOLATIONS OF THE UCL, BUS. & PROF. CODE §17200, ET SEQ.

55. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

56. This cause of action is brought pursuant to Cal. Bus. & Prof. Code §17200, *et seq.*, which provides that “unfair competition shall mean and include any unlawful, unfair or deceptive business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter I (commencing with Section 17500) as Part 3 of Division 7 of the Business and Professions Code.”

57. Defendant’s practices, as set forth above, were intended to promote the sale of Lazy Cakes and constitute unfair, deceptive and/or unlawful business practices within the meaning of California Bus. & Prof. Code §17200, *et seq.*

58. Defendant committed unfair business acts and/or practices.

59. The utility of Defendant’s practices related to the advertising, labeling, packaging, marketing, promotion and selling of Lazy Cakes without warning of the dangers inherent in consuming a relaxation supplement containing melatonin is negligible, if any, when weighed against the harm to the general public, Plaintiff and members of the Class.

1 60. The harmful impact upon members of the general public targeted by
2 such practices and the Class who purchased and consumed Lazy Cakes outweighs
3 any reasons or justifications by Defendant for the unfair business practices
4 Defendant employed to sell Lazy Cakes described herein.

5 61. Defendant had an improper motive (profit before accurate marketing)
6 in its practices related to the advertising, labeling, packaging, marketing, promotion
7 and selling of Lazy Cakes, as set forth above.

8 62. The use of such unfair business acts and practices was and is under the
9 sole control of Defendant, and was deceptively hidden from members of the Class
10 and the general public in Defendant's advertising, labeling, packaging, marketing,
11 promotion and selling of Lazy Cakes.

12 63. Defendant committed a deceptive act or practice by failing to properly
13 disclose to the consumers targeted by Defendant's advertising and promotional
14 campaign the dangers associated with consuming Lazy Cakes, as set forth in detail
15 above. Defendant also committed a deceptive act or practice by using a cartoon
16 character, "Lazy Larry", as a mascot for the product, as well as using vibrant colors
17 and design in the packaging and labeling of Lazy Cakes.

18 64. These deceptive acts and practices had a capacity, tendency, and/or
19 likelihood to deceive or confuse reasonable consumers into believing that Lazy
20 Cakes posed no risk to the health of those who consumed it.

21 65. Defendant also committed unlawful business practices by violating the
22 FAL and CLRA as set forth in detail below, as well as numerous Health and Safety
23 Code and state regulations that make it illegal to sell any misbranded or adulterated
24 food products. For the reasons set forth above, the products at issue fall within the
25 definition of misbranded or adulterated products. The violations of these statutes
26 serve as predicate violations of this prong of the UCL.

27 66. As a purchaser and consumer of Defendant's Lazy Cakes, and as a
28 member of the general public in California who purchased and used Lazy Cakes,

1 Plaintiff has standing and is entitled to and do bring this class action seeking all
2 available remedies under the UCL.

3 67. Pursuant to California Bus. & Prof. Code §17203, Plaintiff seeks an
4 order of this Court for injunctive relief and disgorging and restoring all monies that
5 may have been acquired by Defendant as a result of such unfair, deceptive and/or
6 unlawful business acts or practices.

7 68. Plaintiff, the Class and the general public may be irreparably harmed
8 and/or denied an effective and complete remedy if such relief is not granted.

9 69. As a result of Defendant's violations of the UCL, Plaintiff and the
10 Class are entitled to restitution for out-of-pocket expenses and economic harm in
11 terms of the price he paid for the Product.

12 70. Pursuant to Civil Code §3287(a), Plaintiff and members of the Class
13 are further entitled to pre-judgment interest as a direct and proximate result of
14 Defendant's wrongful conduct. The amount on which interest is to be applied is a
15 sum certain and capable of calculation, and Plaintiff and members of the Class are
16 entitled to interest in an amount according to proof.

17 **VII. SECOND CAUSE OF ACTION**
18 **VIOLATIONS OF THE FAL, BUS. & PROF. CODE §17500, ET SEQ.**

19 71. Plaintiff repeats each and every allegation contained in the paragraphs
20 above and incorporates such allegations by reference herein.

21 72. In violation of California Bus. & Prof. Code §17500, Defendant has
22 disseminated, or caused to be disseminated advertising, labeling, packaging,
23 marketing, and promotion of Lazy Cakes that is deceptive because of its failure to
24 warn of the particular dangers inherent in consuming a food product enhanced with
25 melatonin.

26 73. Defendant compounded this deception by using vibrant colors and
27 designs in the advertising, packaging and labeling of Lazy Cakes.

28 74. These acts deceptively represented Lazy Cakes as posing no risk to the
health of those who consumed it than did regular, store-bought brownies.

75. Defendant's representations and omissions of material facts for Lazy Cakes are by their very nature unfair, deceptive and/or unlawful within the meaning of California Bus. & Prof. Code §17500, *et seq.*, and were likely to deceive reasonable consumers.

76. In making and disseminating the representations and omissions alleged herein, Defendant should have known they were misleading, particularly given the existence of the FDA Warning Letter in which "Drank" manufacturers were cited for adulteration of a food product extremely similar to Lazy Cakes. Accordingly, Defendant acted in violation of California Bus. & Prof. Code §17500, *et seq.*

77. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and members of the Class have suffered harm.

78. Pursuant to Bus. & Prof. Code §17535, Plaintiff seeks an order of this Court for injunctive relief and disgorging and restoring all monies that may have been acquired by Defendant as a result of such deceptive acts and/or practices.

79. As a result of Defendant's violations of the FAL, Plaintiff and the Class are entitled to restitution for out-of-pocket expenses and economic harm.

80. Pursuant to Civil Code §3287(a), Plaintiff and members of the Class are further entitled to pre-judgment interest as a direct and proximate result of Defendant's wrongful conduct. The amount on which interest is to be applied is a sum certain and capable of calculation, and Plaintiff and members of the Class are entitled to interest in an amount according to proof.

VIII. THIRD CAUSE OF ACTION
VIOLATIONS OF THE CLRA, CAL. CIVIL CODE § 1750, ET SEQ.

81. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates by reference each preceding paragraph as though fully set forth at length herein.

82. This cause of action is brought pursuant to the CLRA.

83. Plaintiff and each member of the Class are "consumers" within the meaning of Civil Code §1761(d).

1 84. The purchase of Lazy Cakes by Plaintiff and each member of the Class
2 were and are "transactions" within the meaning of Civil Code §1761(e).

3 85. Defendant's marketing, promotion, and sales of Lazy Cakes within
4 California, as alleged herein, violated the CLRA in at least the following respects
5 for the reasons set forth in detail above: §1770(a)(5), (a)(7), (a)(9), (a)(14) and
6 (a)(16). Plaintiff reserves the right to identify additional violations of this statute.

7 86. Plaintiff seeks and is entitled to equitable relief in the form of an order
8 for injunctive relief and:

- 9 a. Requiring Defendant to make full restitution of all monies
10 wrongfully obtained as a result of the conduct described above; and
11 b. Requiring Defendant to disgorge all ill-gotten gains flowing from
12 the conduct described above.

13 87. Plaintiff, by and through counsel, has previously notified Defendant in
14 writing of the particular violations of section 1770 of the CLRA prior to the filing
15 of this Complaint, and demanded that it take certain corrective actions within the
16 period prescribed by the CLRA for such demands.

17 88. As Defendant failed to adequately respond to the demands for
18 corrective action within the time prescribed by the CLRA, Plaintiff also requests
19 statutory damages, actual damages, plus punitive damages and interest as
20 authorized by section 1780(a) of the CLRA.

21 89. Regardless of an award of damages, Plaintiff also separately seeks and
22 is entitled to, pursuant to section 1780(a)(2) of the CLRA, an order for the equitable
23 relief described above, as well as costs, attorney's fees and any other relief which
24 the Court deems proper.

25
26 **IX. FOURTH CAUSE OF ACTION**
27 **FRAUDULENT CONCEALMENT**
28

1 90. Plaintiff repeats each and every allegation contained in the paragraphs
2 above and incorporates by reference each preceding paragraph as though fully set
3 forth at length herein.

4 91. Defendant withheld and suppressed facts in its advertising, labeling,
5 packaging, marketing and promotion of Lazy Cakes that led consumers to falsely
6 believe that Lazy Cakes posed no risk to the health of those who consumed it than
7 did regular, store-bought brownies.

8 92. Due to the safety matters at issue, Defendant was bound to disclose the
9 truth about these matters, but failed to do so.

10 93. Defendant was aware that its claims were false, given the prevalence
11 of contradictory studies regarding the safety and efficacy of melatonin.

12 94. Nevertheless, Defendant concealed the dangers inherent in Lazy Cakes
13 potent melatonin content, and took steps in the advertising, labeling, packaging,
14 marketing and promotion of Lazy Cakes to prevent consumers from learning the
15 true facts regarding the Product.

16 95. The concealment of the true facts from Plaintiff and members of the
17 Class was done with the intent to induce Plaintiff and members of the Class to
18 purchase and consume Lazy Cakes.

19 96. The reliance by Plaintiff and members of the Class was reasonable and
20 justified in that Defendant appeared to be, and represented itself to be, a reputable
21 business.

22 97. As a direct and proximate result of the fraud and deceit alleged,
23 Plaintiff and members of the Class suffered actual damages in that they have been
24 deprived of the benefit of their bargain and have spent money purchasing Lazy
25 Cakes at a price premium when it actually had significantly less value — or no
26 value — than was reflected in the price they paid for it.

1 105. Plaintiff incorporates by reference each and every preceding paragraph
2 as though fully set forth herein.

3 106. HBB represented that consumption Lazy Cakes would help users
4 safely relax and sleep.

5 107. HBB had no reasonable grounds for believing its representations were
6 true because the efficacy and safety of melatonin have never been scientifically
7 evaluated to a statistically significant degree. HBB should have known, or had a
8 duty to learn, about the true facts that contradicted its representations.

9 108. In making these representations to Plaintiff and the Class, HBB
10 intended to induce Plaintiff and the Class to purchase Lazy Cakes.

11 109. At all times herein, Plaintiff and the Class were unaware of the falsity
12 of HBB's statements.

13 110. Plaintiff and the Class reasonably acted in response to the statements
14 made by HBB when they purchased Lazy Cakes.

15 111. As a proximate result of HBB's negligent misrepresentations, Plaintiff
16 and Class members purchased Lazy Cakes without knowing the potentially harmful
17 side effects or that there may be no effect at all.

18 112. Plaintiff and the Class have been damaged and therefore request
19 appropriate relief as described below.

20 **XII. SEVENTH CAUSE OF ACTION**
21 **FRAUD AND DECEIT**

22 113. Plaintiff incorporates by reference each and every preceding paragraph
23 as though fully set forth herein.

24 114. HBB, from the time Lazy Cakes were first made available to Class
25 members, consistently deceived Plaintiff and the Class by: (1) making false uniform
26 misrepresentations to Plaintiff, the Class, and the public, including, but not limited
27 to, claims that the Product was safe and effective; and (2) concealing from Plaintiff,
28 the Class and the public that the melatonin used in Lazy Cakes could be potentially

1 life threatening. Plaintiff and the Class were unaware these representations were
2 false.

3 115. HBB either misrepresented or suppressed the material fact that Lazy
4 Cakes could have deleterious side effects – or no effects at all.

5 116. When HBB made the foregoing misrepresentations, they knew or
6 recklessly disregarded them to be false and/or had no reasonable basis for believing
7 them to be true.

8 117. The misrepresentations and concealment of material facts were made
9 and conducted by HBB with the intent to mislead and induce Plaintiff and the Class
10 to purchase Lazy Cakes, and had the effect of doing so.

11 118. In affirmative response to the false, fraudulent and/or willful
12 misrepresentations and concealment of material facts by HBB, Plaintiff and Class
13 members were induced to and did purchase Lazy Cakes at a premium price over
14 and above the cost of standard melatonin supplements.

15 119. Plaintiff and other Class members reasonably based their decision to
16 purchase Lazy Cakes on the misrepresentations and omissions of material fact by
17 HBB, and were damaged thereby.

18 120. HBB's acts were done willfully, maliciously, with fraudulent intent
19 and with deliberate disregard of the rights of Plaintiff and the Class, requiring an
20 award of exemplary damages in addition to actual damages.

21 121. Plaintiff and the Class request appropriate relief as described below.

22 **XIII. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of himself and all others similarly
24 situated and the general public as appropriate, prays for a judgment as appropriate
25 for the claims set forth above:

26 1. Certifying the Class as requested herein and nominating plaintiff's
27 attorneys as Class Counsel;

2. Awarding Plaintiff and the proposed Class members actual, statutory and punitive damages to be determined at trial;

3. Awarding declaratory and injunctive relief as permitted by law or equity, including directing Defendant to identify, with Court supervision, victims of their conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful as well as engage in a corrective advertising campaign;

4. Ordering that Defendant be required to make full restitution of all monies wrongfully obtained as a result of the conduct described above and disgorge all ill-gotten gains flowing from the conduct described above.

5. Ordering that Defendant be required to pay pre- and post-judgment interest on all such sums;

6. Awarding attorneys' fees and costs; and

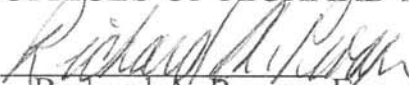
7. Providing such further relief as may be just and proper.

XIV. JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

DATED: August 3, 2011

LAW OFFICES OF RICHARD A. PROAPS

By: 
Richard A. Proaps, Esq.

LAW OFFICES OF RICHARD A.
PROAPS
Richard Proaps, Esq. (CAL: SBN 78898)
rproaps@aol.com
8150 Greenback Lane, Bldg. 200
Fair Oaks, California 95628
Tel: (916) 722-1665
Fax: (916) 722-4881

Attorneys for Plaintiff LEE CHERAMIE

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Manuel Real and the assigned discovery Magistrate Judge is Andrew J. Wistrich.

The case number on all documents filed with the Court should read as follows:

CV11- 6549 R (AJWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

Unless otherwise ordered, the United States District Judge assigned to this case will hear and determine all discovery related motions.

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

Richard A. Proaps cal sbn 78898
 Law Office of Richard A. Proaps
 8150 Greenback Lane, Bldg. 200
 Fair Oaks, CA 95628
 Attorney for Plaintiff

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

LEE CHERAMIE, individually and on behalf of all
 others similarly situated

PLAINTIFF(S)

v.

HBB, LLC, a Tennessee limited liability company, and
 DOES 1 through 10, inclusive

DEFENDANT(S).

CASE NUMBER

CV11-6549 R (AJWx)

SUMMONS

TO: DEFENDANT(S): HBB, LLC, a Tennessee limited liability company, and DOES 1 through 10,
inclusive

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Richard A. Proaps, whose address is 8150 Greenback Lane, Bldg. 200, Fair Oaks, CA 95628. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: August 19, 2011

By: AMY DeAVILA
 Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> Lee Ceramic, individually and on behalf of all others similarly situated		DEFENDANTS HBB, LLC, a Tennessee Limited Liability Company, and DOES 1 through 10, inclusive	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Richard A. Proaps, Law Offices of Richard A. Proaps cal sbn 78898 8150 Greenback Lane, Bldg. 200, Fair Oaks, CA 95628 Tel: 916-722-16565		Attorneys (If Known)	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:35%;">Citizen of This State</td> <td style="width:10%; text-align: center;">PTF DEF</td> <td style="width:10%; text-align: center;"><input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td style="width:35%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; text-align: center;">PTF DEF</td> <td style="width:10%; text-align: center;"><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td colspan="2">Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</td> <td></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td colspan="2">Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> <td></td> </tr> </table>	Citizen of This State	PTF DEF	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State		<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation		<input type="checkbox"/> 6 <input type="checkbox"/> 6	
Citizen of This State	PTF DEF	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF	<input type="checkbox"/> 4 <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State		<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5															
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation		<input type="checkbox"/> 6 <input type="checkbox"/> 6															

IV. ORIGIN (Place an X in one box only.)
☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify):
 ☐ 6 Multi-District Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ 5,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 CAFA 28 U.S.C. section 1332 et seq diversity 28 U.S.C. section 1332(d)(2), (5). Misrepresentation and breach of warranty on consumer product

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
---	--	--	--	---	---

CV11-6549 R (AJWx)

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW

COPY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events, or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Tennessee

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
 Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Richard A. Perry Date August 8, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))